
IN THE
Supreme Court of the United States

OCTOBER TERM 1912

No. 331

In the Matter
of the

Petition of KABUSHIKI KAISHA KAWASAKI ZOKENJO, Owner,
and KAWASAKI KISEN KABUSHIKI KAISHA, Bareboat Char-
terer of the Steamship "VENICE MARU", for Exoneration
from and Limitation of Liability.

CONSUMERS IMPORT Co., Inc., et al.,

Cargo Claimants-Petitioners,

KABUSHIKI KAISHA KAWASAKI ZOKENJO and
KAWASAKI KISEN KABUSHIKI KAISHA,

Respondents.

**RESPONDENTS' BRIEF IN OPPOSITION TO
PETITIONERS' MOTION TO ENLARGE THE
SCOPE OF THE ARGUMENT**

GEORGE C. SPRAGUE,
Counsel for Respondents.

IN THE
Supreme Court of the United States

OCTOBER TERM 1942

No. 881

In the Matter
of the

Petition of KABUSHIKI KAISHA KAWASAKI ZOSENJO, Owner,
and KAWASAKI KISEN KABUSHIKI KAISHA, Bareboat Char-
terer of the Steamship "VENICE MARU", for Exoneration
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KAWASAKI KISEN KABUSHIKI KAISHA,
Respondents.

**RESPONDENTS' BRIEF IN OPPOSITION TO
PETITIONERS' MOTION TO ENLARGE THE
SCOPE OF THE ARGUMENT**

The original petition herein posed five questions as reasons for granting the writ of certiorari. The Court, in granting the petition, limited it to the fifth question, from which it may fairly be inferred that it was denied as to the first, second, third and fourth questions.

Petitioners' present motion, while guised as one "to enlarge the scope of the argument", is, in reality, a motion for reargument of the original petition in respects in which

it has already been denied. Moreover, although ostensibly requesting an enlargement of the scope of the argument to include *only the fourth question* presented by the petition, the motion paper, in effect, also includes the first, second and third questions, inasmuch as the first question is similar to the fourth, while the subjects of the second and third questions, i. e., delegation of the duty of stowing the fish-meal to a surveyor, without informing him of the five cases of heating which the carrier had experienced and burden of proof under the fire statute, are discussed (pp. 2, 3). The Rules appear not to provide for any such reargument, and no reason has been shown why it should be allowed herein.

The arguments now advanced in support of the present motion are the same as those which were previously made in the petition and supporting brief and which were fully answered in Points III and IV of respondents' brief in opposition (pp. 21-28), where the two decisions relied upon by petitioners (*Williams S.S. Co. v. Wilbur*, 9 F. (2d) 662, 623, and *Bank Line v. Porter*, 25 F. (2d) 843, 845) were considered and distinguished. The language quoted from the *Bank Line* case, *supra*, at page 5 of the motion paper, is not "peculiarly pertinent", as is claimed in the motion paper; it merely holds that a surveyor's certificate of seaworthiness of a vessel's engines at Calcutta is *not proof of such seaworthiness* where the shipowner had failed to inform him of engine breakdowns on the voyage out to Calcutta of which he could have had no knowledge otherwise. The shipowner was there held liable for permitting the vessel to leave port with unseaworthy engines which were likely to, and did, break down and for failing to take precautions to unload or ventilate the combustible cargo during the delay of 74 days in the tropics occasioned by such breakdown. In the words of the court, "A condition involving danger of fire and known to the owner of the vessel was permitted to exist through the owner's negligence * * *" (p. 845). This is not comparable with the

situation at bar, for no condition involving danger of fire existed or was permitted to continue with the owner's knowledge on the *Venice Maru*.

There is no possible conflict between the decisions in the Fourth and Ninth Circuits and that of the Second Circuit in the cause below in respect to the fourth question. The motion to enlarge the scope of the argument should be denied.

Respectfully submitted,

GEORGE C. SPRAGUE,
Counsel for Respondents.

Dated: New York, May 28, 1943.